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Filing date: **12/03/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92047162
Party	Defendant Supreme Oil Company
Correspondence Address	AMANDA M. ROACH LADAS & PARRY LLP 224 SOUTH MICHIGAN AVENUE, SUITE 1600 CHICAGO, IL 60604 UNITED STATES chiustm@ladas.net
Submission	Other Motions/Papers
Filer's Name	John P. Luther
Filer's e-mail	chiustm@ladas.net
Signature	/John P Luther/
Date	12/03/2008
Attachments	Motion for Prot Order re Pet Dep.pdf (31 pages)(924191 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD**

FRESH EXPRESS INCORPORATED,

Petitioner,

vs.

SUPREME OIL COMPANY,

Registrant.

Cancellation No. 92047162

Reg. No. 1,758,520

Issued: March 16, 1993

Mark: SALAD BAR

**REGISTRANT'S COMBINED MOTION FOR PROTECTIVE ORDER
REGARDING PETITIONER'S NOTICE OF DEPOSITION AND REQUEST FOR
EXTENSION OF DISCOVERY CUT-OFF DATE**

Pursuant to 37 C.F.R. § 2.120(f), Registrant Supreme Oil Company, ("Registrant"), hereby moves the Board for the entry of a Protective Order with regard to the Petitioner's Notice of Deposition Pursuant to Fed. R. Civ. P. 30(b)(6) served on Registrant by Petitioner Fresh Express Incorporated ("Petitioner"), and respectfully requests the Board quash the Deposition Notice scheduling the 30(b)(6) deposition for December 8, 2008, order that the deposition be rescheduled at a later mutually convenient date, and extend the discovery cut-off date.

I. BACKGROUND

Registrant and Petitioner have been engaged in on-going and meaningful settlement discussions, with the Petitioner proposing a potential settlement offer on November 14, 2008 and the most recent discussion regarding same taking place on November 21, 2008. Nonetheless, on November 20, 2008 Petitioner served upon Registrant its Notice of Deposition Pursuant to Fed. R. Civ. P. 30(b)(6), scheduling the

deposition for December 8, 2008. (Attached hereto as Exhibit A). On November 25, 2008 Registrant wrote to Petitioner requesting the deposition be re-scheduled to allow the parties to continue to engage in meaningful settlement discussions. (Attached as Exhibit B). Petitioner responded via email on November 26, 2008 stating it would file a motion to compel the noticed deposition if Registrant did not provide a date for deposition prior to December 17, 2008. (Attached as Exhibit C). Registrant's counsel responded to Petitioner's email with a phone call on November 28, 2008, wherein it left a voicemail for Petitioner's counsel apologizing for the initial date confusion, offering to agree to extend discovery to allow the deposition to proceed in January, and explaining that its witness would not be available for deposition in December. (See Declaration of Ms. Tanya H. Miari, attached, "Miari Decl." ¶ 6). On November 30, 2008 Petitioner responded via email again requesting a date before December 17, 2008. (Attached as Exhibit D). In response, Registrant telephoned Petitioner's counsel on December 2, 2008 to again express its interest in continuing the settlement discussions, and offer to agree to extend discovery until January and provide a firm date for the noticed deposition in early January, emphasizing the sensibility of conducting discovery in an orderly manner. (See Registrant's December 2, 2008 letter summarizing the telephone conversation, attached as Exhibit E; and Miari Decl. ¶ 8). Petitioner refused this offer, and again insisted on a deposition date prior to December 17, 2008. (See Petitioner's follow-up email of December 2, 2008, attached as Exhibit F).

II. THE NEED FOR PROTECTIVE ORDER

Registrant does not seek this protective order merely for the purpose of delay. There are a number of reasons that it would be unduly burdensome and prejudicial for

Registrant to be required to produce its witness for deposition in December. First, as Petitioner's Counsel is well aware, Registrant's Counsel has been extremely busy and involved in several other time-sensitive matters over the past two weeks including two temporary restraining orders on either sides of the country, involving international clients and matters, not to mention the holiday weekend which just transpired, further shortening the available working period and causing difficulty with respect to counsel's ability to locate and reach interested parties on these and other matters. Furthermore, Registrant's Counsel has repeatedly indicated to Petitioner that its witness will not be available during the month of December, as its client has end of the year business matters to attend to and will be traveling out of the country for the holidays. Moreover, Registrant has emphasized its strong willingness to settle this matter, and in the interest of proceeding in an orderly fashion, has indicated its preference to postpone the deposition for a few short weeks to allow the parties to continue meaningful settlement discussions, and allow Registrant to meaningfully respond to Petitioner's outstanding settlement offer of November 14. In a showing of good faith Registrant offered to agree to extend discovery until January and provide a firm date in early January on which the deposition could proceed. Petitioner has refused to compromise. Despite the fact that Registrant's counsel informed Petitioner of these issues and offered to reschedule on a mutually convenient date in early January, Petitioner still insist the depositions go forward prior to December 17, 2008.

In the interest of proceeding in an orderly fashion, and as the Board has yet to rule on Registrant's Motion to Compel Petitioner's outstanding discovery responses and Registrant's Motion for Protective Order With Respect to Petitioner's Requests for

Admission, both of which pertain to written discovery and discovery abuses by Petitioner, and both which should be resolved prior to the taking of any depositions by either party, there is no harm to Petitioner in delaying the deposition until early January. Petitioner's insistence that the deposition go forward prior to December 17, 2008 is unduly burdensome and appears designed in part to merely harass or prejudice Registrant by making it scramble to respond to Petitioner's unreasonable request.

III. REQUEST FOR RELIEF

WHEREFORE, Registrant respectfully moves this Honorable Court for an Order:

1. Quashing the deposition notice for December 8, 2008;
2. Rescheduling the deposition for a date during the second or third week of January 2009, or another mutually convenient date;
3. Extending the date for discovery cut-off; and
4. Such other and further relief as this Court deems just and proper.

Respectfully submitted,

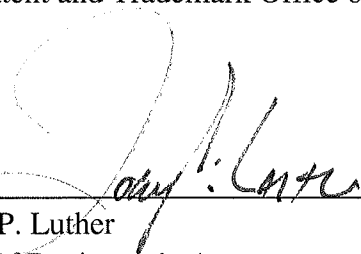
Supreme Oil, Inc.

By: 
John P. Luther
One of Registrant's Attorneys

Frederick W. Meyers
Burton S. Ehrlich
John P. Luther
Tanya H. Miari
Ladas & Parry LLP
224 South Michigan Avenue, Suite 1600
Chicago, Illinois 60604
(312) 427-1300

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that a copy of the foregoing REGISTRANT'S COMBINED MOTION FOR PROTECTIVE ORDER REGARDING PETITIONER'S NOTICE OF DEPOSITION AND REQUEST FOR EXTENSION OF DISCOVERY CUT-OFF DATE, along with attached DECLARATION OF TANYA H. MIARI and EXHIBITS is being electronically filed with the United States Patent and Trademark Office on this 3rd day of December, 2008.



John P. Luther
One Of Registrant's Attorneys

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing REGISTRANT'S COMBINED MOTION FOR PROTECTIVE ORDER REGARDING PETITIONER'S NOTICE OF DEPOSITION AND REQUEST FOR EXTENSION OF DISCOVERY CUT-OFF DATE, along with attached DECLARATION OF TANYA H. MIARI and EXHIBITS was served upon Petitioner's counsel on this 3rd day of December 2008 by email to lperry@perryip.com and by facsimile to (415) 398-6306, and also deposited with the U.S. Postal Service as first class mail, postage prepaid, addressed to counsel for Petitioner, as follows:

E. Lynn Perry
Perry IP Group A.L.C.
4 Embarcadero Center - 39th Floor
San Francisco, CA 94111
T 415-398-6300 (F 415-398-6306)
lperry@perryip.com

By:



John P. Luther
One Of Registrant's Attorneys

EXHIBIT A

HARVEY ■ SISKIND LLP

November 20, 2008

Raffi V. Zerounian

**VIA OVERNIGHT DELIVERY
& FACSIMILE to (312) 427-6663**

Frederick W. Meyers, Esq.
Ladas & Parry LLP
224 South Michigan Avenue, Suite 1600
Chicago, IL 60604

Re: SALAD BAR
Registration No. 1758520 in the U.S.
Cancellation Action No. 92047162

Dear Mr. Meyers:

Please find attached a Notice of Deposition pursuant to Federal Rule of Civil Procedure 30(b)(6) for Supreme Oil Company.

On November 6, 2008, we wrote to you, as a courtesy, to request your client's availability for a deposition on various dates. Despite our repeated requests and the passage of two weeks, you never informed us of your client's availability for the dates mentioned in that letter or otherwise. Given that the discovery period is closing in less than a month, we have no choice but to notice the instant 30(b)(6) deposition on a date listed in our letter of November 6th. Although we have noticed the deposition for December 8, 2008, we are willing to reschedule to another date within the discovery period, within reason, and given our availability. Again, we do this as a courtesy to your client.

If your client is not available on December 8, 2008, we need to know immediately, and we need to meet and confer by no later than **November 25, 2008**, to discuss a mutually acceptable alternative date.

Frederick W. Meyers, Esq.
November 20, 2008
Page 2 of 2

Please let me know if you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Raffi V. Zerounian', with a long horizontal flourish extending to the right.

Raffi V. Zerounian

cc: E. Lynn Perry
RVZ:lp

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

FRESH EXPRESS INCORPORATED,

Petitioner,

v.

SUPREME OIL COMPANY,

Registrant.

Cancellation No.: 92047162

Reg. No. 1,758,520

Issued: March 16, 1993

Mark: SALAD BAR

NOTICE OF DEPOSITION PURSUANT TO FRCP 30(b)(6)

TO REGISTRANT AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Petitioner FRESH EXPRESS INCORPORATED submits the following Notice of Deposition pursuant to Federal Rule of Civil Procedure 30(b)(6) and requests the attendance of the person(s) most knowledgeable of Registrant **SUPREME OIL COMPANY** ("Supreme Oil"), at the offices of Tribler Orpett & Meyer, P.C., 225 West Washington Street, Suite 1300, Chicago, IL 60606-3408, on December 8, 2008, commencing at 10:00 a.m. Central Standard Time, and continuing from day to day thereafter until completed. Said deposition shall be taken upon oral examination before a certified shorthand reporter duly authorized to administer oaths in the State of Illinois and may be recorded through visual display of the testimony.

Supreme Oil is to provide the following witness(es):

1. The person(s) most knowledgeable as to each type of good or service offered by Supreme Oil under the mark "SALAD BAR" listed in U.S. Registration No. 1,758,520, from inception of the mark to the present.

2. The person(s) most knowledgeable as to how Supreme Oil has marketed, advertised

and promoted the mark "SALAD BAR" in the United States, including the costs incurred for such activities, from inception of the mark to the present.

3. The person(s) most knowledgeable as to the demographics of Supreme Oil's target and actual customers of products or services offered under the mark "SALAD BAR" for each good or service listed in U.S. Registration No. 1,758,520 in the United States, including but not limited to their age, residence, education, income, occupation, and other characteristics, from inception of the mark to the present.

4. The person(s) most knowledgeable as to any plans by Supreme Oil to expand its lines of goods and services offered under the mark "SALAD BAR" in the United States, from inception of the mark to the present.

5. The person(s) most knowledgeable as to the dollar amount of Supreme Oil's gross sales and gross profits since it adopted the mark "SALAD BAR" for sales of each good or services listed in U.S. Registration No. 1,758,520 in the United States, from the inception of use to the present.

6. The person(s) most knowledgeable as to Supreme Oil's corporate structure, including the identity of each of its officers, directors and managerial employees that relate to Registrant's use and sales of products and services of the mark "SALAD BAR," from inception of the mark to the present.

7. The person(s) most knowledgeable as to the circumstances under which Supreme Oil's actual customers and any prospective customers came to learn of its products or services offered under the mark "SALAD BAR" for each good or service listed in U.S. Registration No. 1,758,520 in the United States, from inception of the mark to the present..

8. The person(s) most knowledgeable as to the claimed commercial strength and consumer awareness of the "SALAD BAR" mark for each good listed in U.S. Registration No. 1,758,520 in the United States.

9. The person(s) most knowledgeable as to Supreme Oil's communications with any third parties regarding this proceeding.

10. The person(s) most knowledgeable as to any intent to continue or resume use of the mark "SALAD BAR" by Supreme Oil for any goods or services listed in U.S. Registration No. 1,758,520 in the United States.

11. The person(s) most knowledgeable as to the established trade channels of each good or service offered under the mark "SALAD BAR" in the United States, from inception of the mark to the present.

12. The person(s) most knowledgeable as to the conditions under which each good or service listed in U.S. Registration No. 1,758,520 for the mark "SALAD BAR" are purchased, including the buyers to whom sales are made, from inception of the mark to the present.

13. The person(s) most knowledgeable as to any periods of nonuse of the mark "SALAD BAR" by Supreme Oil for any goods listed in U.S. Registration No. 1,758,520.

14. The person(s) most knowledgeable as to any products or services offered under the mark "SALAD BAR" that Supreme Oil has discontinued.

15. The person(s) most knowledgeable as to the chain of title of U.S. Registration No. 1,758,520 for the mark "SALAD BAR."

16. The person(s) most knowledgeable as to the filing of maintenance documents for the registration of U.S. Registration No. 1,758,520 for the mark "SALAD BAR," from inception of the mark to the present.

17. The person(s) most knowledgeable as to any evidence that the mark "SALAD BAR" has been used by Supreme Oil for each good listed in U.S. Registration No. 1,758,520, from the inception of the mark to the present.

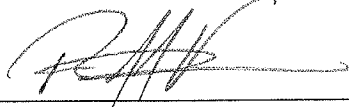
18. The person(s) most knowledgeable as to the licensing of the mark "SALAD BAR" by Supreme Oil, from inception of the mark to the present.

//

19. The person(s) most knowledgeable as to Supreme Oil's document retention policy or policies, from 1993 to the present.

Dated: November 20, 2008

Respectfully submitted,



Raffi V. Zerounian

Perry IP Group ALC
E. Lynn Perry
4 Embarcadero Center, 39th Floor
San Francisco, CA 94111
Telephone: (415) 398-6300

Harvey Siskind LLP
Raffi V. Zerounian
Four Embarcadero Center, 39th Floor
San Francisco, CA 94111
Telephone: (415) 354-0100
Facsimile: (415) 391-7124

Attorneys for Petitioner Fresh Express Incorporated

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the attached **NOTICE OF DEPOSITION PURSUANT TO FRCP 30(b)(6)**, dated November 20, 2008 (Cancellation No.: 92047162), by mailing a copy thereof to Registrant's counsel via facsimile and overnight delivery, postage prepaid, addressed to Frederick Meyers on November 20, 2008 as follows:

Frederick W. Meyers
Ladas & Parry LLP
224 S. Michigan Avenue
Suite 1600
Chicago, IL 60604



Lee Martinez

EXHIBIT B

LADAS & PARRY LLP
INTELLECTUAL PROPERTY LAW

Richard J. Streit ■ Frederick W. Meyers ■ John E. McKie ■ Burton S. Ehrlich ■ Brian W. Hameder ■ W. William Park
Zareefa Burki Flener, MS ■ Loren K. Thompson, Ph.D* ■ John P. Luther** ■ Anthony E. Anderson
Adam V. Litteken, MS*** ■ Richard J. Albright, MS ■ Eric D. Babych**** ■ Chloe A. Hecht

Tanya H. Miari ■ Keith S. Van Duyne, MS*****

Of Counsel: Donald P. Reynolds ■ Valerie Neymeyer-Tynkov

* Member Kansas Bar, member California Bar, not admitted in Illinois

** Member Oklahoma Bar, member Washington Bar, not admitted in Illinois

*** Member Missouri Bar, not admitted in Illinois

**** Member Colorado Bar, not admitted in Illinois

***** Member District of Columbia Bar



LAW OFFICES ■ LADAS & PARRY LLP ■ 224 South Michigan Avenue ■ Suite 1600 ■ Chicago, Illinois 60604
P 312.427.1300 ■ F 312.427.6663 ■ F 312.427.6668 ■ www.ladas.com

November 25, 2008

Raffi Zerounian
Harvey Siskind
4 Embarcadero Center - 39th Floor
San Francisco, CA 94111

VIA EMAIL

Re: SALAD BAR, Registration No. 1758520 in the U.S.
Cancellation Action No. 92047784

Dear Raffi:

Thank you for your letter to us dated November 20, 2008 which was addressed to Mr. Meyers of our firm. Unfortunately, attached to your letter, we could not find the supposed Notice of Deposition under Rule 30(b)(6) and it would be appreciated if you could send another copy of that document.

You have indicated that if our client is not available on December 8, 2008 then we should discuss a mutually acceptable alternative date that is still within the discovery time period. Our client is not available on that date and our proposal is to set a potential date around the second week in January and as may be appropriate accordingly extend any scheduling. In this manner we will not be interfering with the holidays and you will have enough advance time to consider our client's written settlement proposal in advance of the date for a deposition. Furthermore, this will also allow us sufficient advance time to consider your request and arrangements for a potential telephonic deposition.

If you could provide us with dates tomorrow, Wednesday, November 26, 2008, then I could follow-up with the client on possible availability. These dates should work

for you, since you advised in your letter that you would be willing to reschedule the depositions with dates that are still within the discovery time period and this proposed scheduling is, of course within that time period. We look forward to hearing from you. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tanya H. Miari', with a stylized flourish at the end.

Tanya H. Miari
Ladas & Parry LLP

EXHIBIT C

Miari, Tanya

From: Raffi Zerounian [RZerounian@harveysiskind.com]
Sent: Wednesday, November 26, 2008 4:47 PM
To: Meyers, Fred
Cc: Luther, John; Ehrlich, Burton; Lynn Perry - PerryIP; Miari, Tanya; Raffi Zerounian
Subject: RE: SALAD BAR Cancellation No. 92047162
Importance: High

Mr. Meyers,

On November 20, 2008, we sent you the attached letter and 30(b)(6) deposition notice both by facsimile and overnight delivery. Please find attached the facsimile transmittal sheet, showing transmission of all 8 pages to your firm. I am surprised that your firm misplaced the deposition notice sent by overnight delivery, as well as the facsimile copy, but somehow did not misplace the letter. Anyway, the letter we sent you on November 20th, to which Ms. Miari refers in her letter, made clear that we noticed a deposition on December 8, 2008.

Our letter dated November 20th clearly stated that we expected an immediate response if your client was not available on December 8th for a deposition: "If your client is not available on December 8, 2008, we need to know immediately, and we need to meet and confer by no later than November 25, 2008, to discuss a mutually acceptable alternative date." Instead of calling us immediately, you waited until 7:00 p.m. Central Standard Time to send us an email with a letter stating that your client is unavailable on that date. You also do not list an alternative date within the discovery period.

We have been trying to clear a date for a deposition with you since November 6th. In a letter sent on that date, we asked your client's availability on certain dates for a deposition, which included December 8th. I repeatedly asked for your client's availability on those dates during telephone conferences. You never provided a date. Under the Board's schedule, we are able to conduct discovery until December 17th. Please let me know your client's availability to hold a 30(b)(6) deposition before December 17th. If you do not give us such a date before Tuesday, December 2, 2008, we will move for an order compelling a deposition.

Have a happy thanksgiving.

Regards,

Raffi

Raffi V. Zerounian
Harvey Siskind LLP
Tel: 415.354.0100

From: Miari, Tanya [mailto:TMiari@ladas.net]
Sent: Tuesday, November 25, 2008 4:57 PM
To: Raffi Zerounian; Meyers, Fred
Cc: Luther, John; Ehrlich, Burton; Lynn Perry - PerryIP

12/3/2008

Subject: RE: SALAD BAR Cancellation No. 92047162

Dear Raffi,

Please see our attached letter of today. We look forward to your response.

Sincerely,

Tanya Miari
Ladas & Parry LLP

This email has been scanned by the MessageLabs Email Security System.
For more information please visit <http://www.messagelabs.com/email>

EXHIBIT D

Miari, Tanya

From: Raffi Zerounian [RZerounian@harveysiskind.com]
Sent: Sunday, November 30, 2008 9:14 PM
To: Meyers, Fred; Ehrlich, Burton
Cc: Luther, John; Lynn Perry - PerryIP; Miari, Tanya; Raffi Zerounian
Subject: RE: SALAD BAR Cancellation No. 92047162

Messrs. Meyers and Ehrlich,

On Friday, when our office was closed for the Thanksgiving holiday, I received a voicemail message from Mr. Ehrlich stating that John Luther was out of the office, and that John would not be able to provide an alternative deposition date within the discovery period until he returns. I hope that one of the three other attorneys listed on the pleadings can check the client's availability, since we have been trying to clear a date since November 6th.

I am available to meet and confer about this, and the other subjects mentioned in Mr. Ehrlich's voicemail, tomorrow, Monday, December 1st. Please let me know your availability.

Regards,

Raffi

Raffi V. Zerounian
Harvey Siskind LLP
Tel: 415.354.0100

From: Raffi Zerounian
Sent: Wednesday, November 26, 2008 2:47 PM
To: Meyers, Fred
Cc: Luther, John; Ehrlich, Burton; Lynn Perry - PerryIP; 'Miari, Tanya'; Raffi Zerounian
Subject: RE: SALAD BAR Cancellation No. 92047162
Importance: High

Mr. Meyers,

On November 20, 2008, we sent you the attached letter and 30(b)(6) deposition notice both by facsimile and overnight delivery. Please find attached the facsimile transmittal sheet, showing transmission of all 8 pages to your firm. I am surprised that your firm misplaced the deposition notice sent by overnight delivery, as well as the facsimile copy, but somehow did not misplace the letter. Anyway, the letter we sent you on November 20th, to which Ms. Miari refers in her letter, made clear that we noticed a deposition on December 8, 2008.

Our letter dated November 20th clearly stated that we expected an immediate response if your client was not available on December 8th for a deposition: "If your client is not available on December 8, 2008, we need to know immediately, and we need to meet and confer by no later than November 25, 2008, to discuss a mutually acceptable alternative date." Instead of calling us immediately, you waited until 7:00 p.m. Central

12/3/2008

Standard Time to send us an email with a letter stating that your client is unavailable on that date. You also do not list an alternative date within the discovery period.

We have been trying to clear a date for a deposition with you since November 6th. In a letter sent on that date, we asked your client's availability on certain dates for a deposition, which included December 8th. I repeatedly asked for your client's availability on those dates during telephone conferences. You never provided a date. Under the Board's schedule, we are able to conduct discovery until December 17th. Please let me know your client's availability to hold a 30(b)(6) deposition before December 17th. If you do not give us such a date before Tuesday, December 2, 2008, we will move for an order compelling a deposition.

Have a happy thanksgiving.

Regards,

Raffi

Raffi V. Zerounian
Harvey Siskind LLP
Tel: 415.354.0100

From: Miari, Tanya [mailto:TMiari@ladas.net]
Sent: Tuesday, November 25, 2008 4:57 PM
To: Raffi Zerounian; Meyers, Fred
Cc: Luther, John; Ehrlich, Burton; Lynn Perry - PerryIP
Subject: RE: SALAD BAR Cancellation No. 92047162

Dear Raffi,

Please see our attached letter of today. We look forward to your response.

Sincerely,

Tanya Miari
Ladas & Parry LLP

This email has been scanned by the MessageLabs Email Security System.
For more information please visit <http://www.messagelabs.com/email>

EXHIBIT E

LADAS & PARRY LLP

INTELLECTUAL PROPERTY LAW

Richard J. Streit ■ Frederick W. Meyers ■ John E. McKie ■ Burton S. Ehrlich ■ Brian W. Hameder ■ W. William Park
Zareefa Burki Flener, MS ■ Loren K. Thompson, Ph.D* ■ John P. Luther** ■ Anthony E. Anderson
Adam V. Litteken, MS*** ■ Richard J. Albright, MS ■ Eric D. Babych**** ■ Chloe A. Hecht

Tanya H. Miari ■ Keith S. Van Duyne, MS*****

Of Counsel: Donald P. Reynolds ■ Valerie Neymeyer-Tynkov

* Member Kansas Bar, member California Bar, not admitted in Illinois

** Member Oklahoma Bar, member Washington Bar, not admitted in Illinois

*** Member Missouri Bar, not admitted in Illinois

**** Member Colorado Bar, not admitted in Illinois

***** Member District of Columbia Bar



LAW OFFICES ■ LADAS & PARRY LLP ■ 224 South Michigan Avenue ■ Suite 1600 ■ Chicago, Illinois 60604
P 312.427.1300 ■ F 312.427.6663 ■ F 312.427.6668 ■ www.ladas.com

December 2, 2008

Raffi Zerounian
Harvey Siskind
4 Embarcadero Center - 39th Floor
San Francisco, CA 94111

VIA EMAIL

Re: SALAD BAR, Registration No. 1758520 in the U.S.
Cancellation Action No. 92047162

Dear Raffi:

This letter is to confirm that during our telephone conference this afternoon, we expressed strong interest in settlement. We have repeatedly affirmed our desire to settle this matter, but need additional time to respond in a meaningful way to your outstanding and recent very detailed settlement offer of several weeks ago. As such and for the other scheduling issues which we discussed, as well as for the orderly completion of discovery, we offered to extend the discovery period to allow the parties time to pursue meaningful settlement discussions, and commit to a firm date in January to produce our witness(es) for their 30(b)(6) deposition(s). You refused to agree to this proposal, and insisted the deposition proceed on or before December 17, 2008.

We have agreed to contact you tomorrow to update you on the status of matters, and consider with you a firm date for our client's deposition. Furthermore, please be advised that we are also still in the process of locating additional documents which we shall produce, subject to availability.

In the meantime, do not hesitate to contact us should you have any questions.

Sincerely,

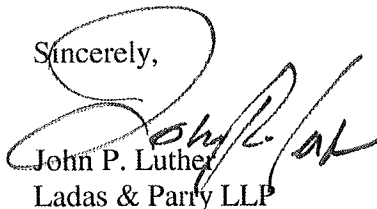

John P. Luther
Ladas & Parry LLP

EXHIBIT F

Miari, Tanya

From: Raffi Zerounian [RZerounian@harveysiskind.com]
Sent: Tuesday, December 02, 2008 6:26 PM
To: Luther, John
Cc: Lynn Perry - PerryIP; Miari, Tanya; Meyers, Fred; Raffi Zerounian; Ehrlich, Burton
Subject: RE: SALAD BAR Cancellation No. 92047162

John,

This follows up to our conference of today. You did not have any information about your client's availability for a 30(b)(6) deposition before December 17, 2008, which is the close of discovery for Fresh Express under the Board's current scheduling order. Again, we have been requesting your client's availability since November 6th.

Regards,

Raffi

Raffi V. Zerounian
Harvey Siskind LLP
Tel: 415.354.0100

From: Raffi Zerounian
Sent: Sunday, November 30, 2008 7:14 PM
To: 'Meyers, Fred'; 'Ehrlich, Burton'
Cc: 'Luther, John'; Lynn Perry - PerryIP; 'Miari, Tanya'; Raffi Zerounian
Subject: RE: SALAD BAR Cancellation No. 92047162

Messrs. Meyers and Ehrlich,

On Friday, when our office was closed for the Thanksgiving holiday, I received a voicemail message from Mr. Ehrlich stating that John Luther was out of the office, and that John would not be able to provide an alternative deposition date within the discovery period until he returns. I hope that one of the three other attorneys listed on the pleadings can check the client's availability, since we have been trying to clear a date since November 6th.

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Regards,

Raffi

Raffi V. Zerounian
Harvey Siskind LLP
Tel: 415.354.0100

12/3/2008

From: Raffi Zerounian
Sent: Wednesday, November 26, 2008 2:47 PM
To: Meyers, Fred
Cc: Luther, John; Ehrlich, Burton; Lynn Perry - PerryIP; 'Miari, Tanya'; Raffi Zerounian
Subject: RE: SALAD BAR Cancellation No. 92047162
Importance: High

Mr. Meyers,

On November 20, 2008, we sent you the attached letter and 30(b)(6) deposition notice both by facsimile and overnight delivery. Please find attached the facsimile transmittal sheet, showing transmission of all 8 pages to your firm. I am surprised that your firm misplaced the deposition notice sent by overnight delivery, as well as the facsimile copy, but somehow did not misplace the letter. Anyway, the letter we sent you on November 20th, to which Ms. Miari refers in her letter, made clear that we noticed a deposition on December 8, 2008.

Our letter dated November 20th clearly stated that we expected an immediate response if your client was not available on December 8th for a deposition: "If your client is not available on December 8, 2008, we need to know immediately, and we need to meet and confer by no later than November 25, 2008, to discuss a mutually acceptable alternative date." Instead of calling us immediately, you waited until 7:00 p.m. Central Standard Time to send us an email with a letter stating that your client is unavailable on that date. You also do not list an alternative date within the discovery period.

We have been trying to clear a date for a deposition with you since November 6th. In a letter sent on that date, we asked your client's availability on certain dates for a deposition, which included December 8th. I repeatedly asked for your client's availability on those dates during telephone conferences. You never provided a date. Under the Board's schedule, we are able to conduct discovery until December 17th. Please let me know your client's availability to hold a 30(b)(6) deposition before December 17th. If you do not give us such a date before Tuesday, December 2, 2008, we will move for an order compelling a deposition.

Have a happy thanksgiving.

Regards,

Raffi

Raffi V. Zerounian
Harvey Siskind LLP
Tel: 415.354.0100

From: Miari, Tanya [mailto:TMiari@ladas.net]
Sent: Tuesday, November 25, 2008 4:57 PM
To: Raffi Zerounian; Meyers, Fred
Cc: Luther, John; Ehrlich, Burton; Lynn Perry - PerryIP
Subject: RE: SALAD BAR Cancellation No. 92047162

Dear Raffi,

12/3/2008

Please see our attached letter of today. We look forward to your response.

Sincerely,

Tanya Miari
Ladas & Parry LLP

This email has been scanned by the MessageLabs Email Security System.
For more information please visit <http://www.messagelabs.com/email>

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

U.S. Trademark Registration No.1,758,520
Registered Mark: SALAD BAR

Fresh Express Incorporated,

Petitioner,

vs.

Cancellation No. 92047162

Supreme Oil Company,

Registrant.

**DECLARATION OF TANYA H. MIARI
IN SUPPORT OF REGISTRANT'S COMBINED MOTION FOR PROTECTIVE ORDER
REGARDING PETITIONER'S NOTICE OF DEPOSITION AND REQUEST FOR
EXTENSION OF DISCOVERY CUT-OFF DATE**

1. I am an attorney of the law firm of Ladas & Parry LLP, and am counsel of record for Registrant Supreme Oil Company (hereinafter "Registrant").
2. I have personal knowledge of the matters stated herein. I make this declaration in support of Registrant's Combined Motion for Protective Order Regarding Petitioner's Notice of Deposition and Request for Extension of Discovery Cut-off Date.
3. On November 20, 2008 Petitioner served upon Registrant its Notice of Deposition Pursuant to Fed. R. Civ. P. 30(b)(6), scheduling the deposition for December 8, 2008. A true and correct copy of this Notice is attached as Exhibit A.

4. On November 25, 2008 Registrant wrote to Petitioner requesting the deposition be re-scheduled to allow the parties to continue to engage in meaningful settlement discussions. A true and correct copy of this letter is attached as Exhibit B.

5. Petitioner responded via email on November 26, 2008 stating it would file a motion to compel the noticed deposition if Registrant did not provide a date for deposition prior to December 17, 2008. A true and correct copy of this email is attached as Exhibit C.

6. Registrant's counsel responded to Petitioner's email with a phone call on November 28, 2008, wherein it left a voicemail for Petitioner's counsel apologizing for the initial date confusion, offering to agree to extend discovery to allow the deposition to proceed in January, and explaining that its witness would not be available for deposition in December.

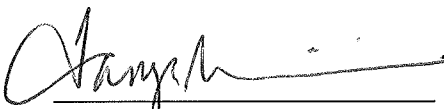
7. On November 30, 2008 Petitioner responded via email again requesting a date before December 17, 2008. A true and correct copy of this email is attached as Exhibit D.

8. Registrant telephoned Petitioner's counsel on December 2, 2008 to again express its interest in continuing the settlement discussions, and offer to agree to extend discovery until January and provide a firm date for the noticed deposition in early January, emphasizing the sensibility of conducting discovery in an orderly manner. A true and correct copy of Registrant's December 2, 2008 letter summarizing the telephone conversation is attached as Exhibit E.

9. On December 2, 2008 Petitioner sent an email summarizing the December 2, 2008 telephone conversation. A true and correct copy of this email is attached as Exhibit F.

10. Being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of Registrant's registration, I declare that the foregoing statements made of my own knowledge are true, and all statements made on information and belief are believed to be true.

Executed in Chicago, Illinois on December 3, 2008

By: 
Tanya H. Miari

Ladas & Parry LLP
224 S. Michigan Avenue
Suite 1600
Chicago, IL 60604
(312) 427-1300